

ORIGINAL
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE,
Plaintiff

v.

ROBERT W. MEYERS, et al.,
Defendants

No. 1:CV-00-0895

(Magistrate Judge Smyser)

DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION FOR EXTENSION OF TIME AND FOR
A TEMPORARY RESTRAINING ORDER

FILED
HARRISBURG

AUG 16 2001

MARY E. D'ANDREA, CL
 Per 9/8
DEPUTY CLERK

Introduction

In this civil action for equitable relief and damages brought pursuant to 42 U.S.C §1983, defendants have filed a motion for summary judgment supported by a statement of material facts, a set of documentary exhibits and a memorandum of law. Plaintiff's response to defendants' motion was due by July 30, 2001.

Not having received a response from plaintiff, the Court on August 8, 2001, directed plaintiff to file his response to defendants' motion for summary judgment on or before August 22, 2001. On August 15, 2001, defendants' counsel received a copy of plaintiff's "motion for extension of time and for a TRO to allow plaintiff to make copies," together with a "brief in support."¹

¹While plaintiff's motion is dated August 9, 2001, the envelope in which it was mailed has a postmark of August 14, 2001, and it was received at the office of undersigned counsel on

Argument

Although plaintiff has had ample time in which to file a response to defendants' motion for summary judgment, defendants do not oppose an additional enlargement of time of a reasonable length, for plaintiff to file his response, given his pro se status.

Defendants do oppose, however, the issuance of a temporary restraining order because plaintiff cannot establish his right to relief and such extraordinary relief is unnecessary. See, e.g., Fink v. Supreme Court of Pennsylvania, 646 F.Supp. 569, 570 (M.D.Pa. 1986) (Muir, J.); Northern Pennsylvania Legal Services, Inc. v. County of Lackawanna, 513 F.Supp. 678, 681 (M.D.Pa. 1981) (Nealon, J.).

Before a court enters a temporary restraining order, it should determine 1) whether plaintiff has made a strong showing that he is likely to prevail on the merits; 2) whether the injury is imminent; 3) whether the injury is irreparable; 4) whether granting the injunction will substantially harm other parties interested in the proceedings; and 5) whether such an injunction will adversely affect the public interest. Fink, supra. If the movant cannot establish each element of the test, the temporary restraining order should not issue. Id. See

August 15, 2001, six days after plaintiff's certification of service. (See attachments).

also Skehan v. Board of Trustees of Bloomsburg State College, 353 F.Supp. 542, 543 (M.D.Pa. 1973)(Muir, J.).

Plaintiff has made no showing of satisfaction of any of the elements of the standard for a temporary restraining order. As a pro se litigant who has been granted modified in forma pauperis status, plaintiff is not excused from the usual and customary costs — like photocopying — which are associated with litigation. Thus, plaintiff cannot make a strong showing that he is likely to prevail on a claim of entitlement to freedom from submitting copies of documents (even assuming such a claim were properly part of this case). Furthermore, plaintiff has failed to demonstrate that he has exhausted his available administrative remedies with respect to a claim for copies of documents. This alone would preclude success on the merits and accordingly bars preliminary relief. Fortes v. Harding, 19 F.Supp.2d 323, 326 n.3 (M.D.Pa. 1998) (Vanaskie, J.).

If plaintiff's argument is that he is simply not permitted to photocopy certain documents, regardless of his ability to pay for copies, plaintiff has made no showing that the documents he seeks to submit are material to his response. Thus, he cannot demonstrate that his claimed "injury" is either imminent or irreparable. Fink, 646 F.Supp. at 570.

As an accommodation to plaintiff, however, defendants are willing to

forego insistence upon a service copy of “policy statements” and “medical records” with their service copy of plaintiff’s summary judgment response, because defendants’ counsel has access to Department of Corrections policy statements and plaintiff’s medical records. Defendants simply request that plaintiff identify with particularity which policy statements and which portions of his medical records he cites or relies upon in his response to defendants’ motion for summary judgment so that defendants may be able to respond to plaintiff’s arguments, if necessary. By agreeing to forego service of their copies, defendants do not suggest that plaintiff should be excused from filing copies of supporting documents with the Clerk.

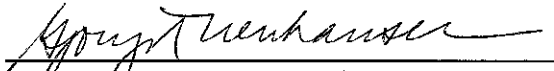
For these reasons, plaintiff cannot satisfy the standard for the issuance of a temporary restraining order. Fink, supra.

Conclusion

Plaintiff’s motion for temporary restraining order should be denied.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: 
GREGORY R. NEUHAUSER
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-8106

DATE: August 15, 2001

TERRANCE MONTAGUE

V. PLAINTIFF

ROBERT W. MEYERS, ET AL

DEFENDANTS

CIVIL NO. 1: CV-00-0895

(MAGISTRATE Judge Smyser

CERTIFICATE OF SERVICE

I TERRANCE MONTAGUE hereby certify that ON AUGUST 9th 2001
I CAUSED TO BE SERVED A TRUE AND CORRECT COPY OF THE
MOTION FOR EXTENSION OF TIME AND FOR A TRO TO ALLOW
PLAINTIFF TO MAKE COPIES ALONG WITH BRIEF IN SUPPORT
WAS SENT TO THE FOLLOWING by PLACING IT IN THE INMATE
OUTGOING MAILBOX

DATED: 8-9-2001

GREGORY R. NEUHAUSER

OFFICE OF ATTORNEY GENERAL

COMMONWEALTH OF PENNSYLVANIA

STRAWBERRY SQUARE

HARRISBURG, PA 17120

Terrance Montague

SCI-POKVIEW

BOX A

BELLEfonte, PA 16823-0820

TERRANCE MONTAGUE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE, : CIVIL NO. 1:CV-00-0895
Plaintiff :
v. : (Magistrate Judge Smyser)
ROBERT W. MEYERS, et al :
Defendants :

MOTION FOR EXTENSION OF TIME AND FOR A
TRO TO ALLOW PLAINTIFF TO MAKE COPIES

PLAINTIFF TERRANCE MONTAGUE REQUEST FOR ENLARGEMENT OF TIME PURSUANT TO RULE 6 OF THE FEDERAL RULES OF CIVIL PROCEDURES, AND TO GRANT HIM AN TEMPORARY RESTRAINING ORDER PURSUANT TO RULE 65 OF THE FEDERAL RULES OF CIVIL PROCEDURES TO ALLOW HIM TO MAKE COPIES OF HIS EXHIBITS TO SEND WITH HIS RESPONSE TO DEFENDANTS MOTION FOR SUMMARY JUDGEMENT, BECAUSE SCI-ROCKVIEW'S LIBRARY (WHERE INMATES COPIES ARE MADE) HAS A POLICY AGAINST INMATES MAKING COPIES OF "POLICY STATEMENTS," AND MEDICAL RECORDS AND/OR JUST WILL NOT ALLOW PLAINTIFF TO COPY SAME.

Dated: 8-9-01

Terrance Montague
Terrance Montague, BZ-2761
Box A, Bellefonte, PA
16823-0820

BRIEF IN SUPPORT

RULE 6 OF THE FEDERAL RULES OF CIVIL PROCEDURES PROVIDES FOR AN ENLARGEMENT OF TIME.

RULE 65 OF THE FEDERAL RULES OF CIVIL PROCEDURES PROVIDES FOR THE ISSUANCE OF AN TRO.

Dated: 8-9-01

Terrance Montague
Terrance Montague, BZ-2761
Box A, Bellefonte, PA
16823-0820

RECEIVED
Office of Attorney General
AUG 15 2001
Litigation Section

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE,
Plaintiff

v.

ROBERT W. MEYERS, et al.,
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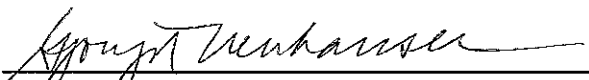
No. 1:CV-00-0895

: (Magistrate Judge Smyser)

CERTIFICATE OF SERVICE

I, **GREGORY R. NEUHAUSER**, Senior Deputy Attorney General
for the Commonwealth of Pennsylvania, Office of Attorney General, hereby
certify that on **August 16, 2001**, I caused to be served a true and correct copy of
the foregoing document **Defendants' Response to Plaintiff's Motion for**
Extension of Time and for a Temporary Restraining Order by depositing it in
the United States mail, first-class postage prepaid to the following:

Terrance Montague, BZ-2761
SCI-Rockview
Box A
Bellefonte, PA 16823-0820


GREGORY R. NEUHAUSER
Senior Deputy Attorney General